



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 27, 2009

CBCA 1255-RATE

In the Matter of LOGISTICS INTERNATIONAL, INC.

Alan F. Wohlstetter and Stanley I. Goldman of Denning & Wohlstetter, Washington, DC, appearing for Claimant.

James F. Fitzgerald, Director, Transportation Audits Division, Office of Travel, Motor Vehicles & Card Services, Federal Acquisition Service, General Services Administration, Arlington, VA, appearing for General Services Administration.

Lt. Col. Sheila McDonald, Office of the Staff Judge Advocate, Surface Deployment and Distribution Command, Department of the Air Force, Scott Air Force Base, IL, appearing for Department of Defense.

KULLBERG, Board Judge.

On October 22, 2008, Logistics International, Inc. (LII) moved for reconsideration of the Board's decision that dismissed this case for lack of jurisdiction.¹ LII argues in its motion that it had filed a claim with GSA, and that this Board has jurisdiction to review its claim. We find that the jurisdictional requirements for review of LII's claim at this Board were not met, and we reaffirm our previous decision.

GSA issued notices of overcharges during 2004 for payments made to LII on various government bills of lading (GBLs). Payments to LII on the GBLs were made during 2002

¹ *Logistics International, Inc.*, CBCA 1255-RATE, 09-1 BCA ¶ 34,091 (2008).

and 2003. GSA collected overcharges on the GBLs by offset, and LII's counsel sent an electronic mail message dated May 20, 2008, to GSA, which stated the following:

In response to your email the following are a few of [the] GBLs which involved offsets made more than three years after payment:

GQ098083, Lahr, John P.; the payment date was 2/22/03; the offset was made more than three years later. Another example is GBL C5969538, Hopkins, Kenny; payment date was 9/26/02; and the offset was made more than three years later. Another example is GBL GQ098077, Davis, Gregory; the payment date was 12/09/02; and the offset was made more than three years later.

In my opinion[,] both the transportation audit statute and the audit regulations make clear that offsets relating to overcharges, as distinguished from ordinary debts[,] are governed by the three-year statute of limitations and that offsets made more than three years after the date of payment are specifically prohibited.

I know that at one time you once told me that you were concerned about holding up further offsets due to the running three-year statute of limitations.

I would appreciate your favorable review of this matter as the last thing I would like to have is another case before the CBCA.

Claimant's Motion for Reconsideration, Attachment 1. In an electronic mail message dated May 23, 2008, Mr. James Fitzgerald of GSA responded to LII's counsel with the following:

I have researched the individual transaction[s] you sent to me[,] and they were all "offset" more than three years after payment. As pointed out, the GSA Audit Division can take "deductions" for up to three years on transportation overcharges and ten year[s] on ordinary debts. These transactions concern offsets not deductions. The Treasury regulations and specifically the Debt Collection Act, provide for Federal Agencies to take

offsets any time a payment is about to be made to a company that has a debt to the Government. While deductions can be taken from finance centers all over the Government, offsets are taken internally within the agency. I hope this clarifies the action on the above transactions.

Id., Attachment 2.

By letter dated July 8, 2008, LII filed with this Board its claim in the amount of \$12,093.71. Accompanying its letter was a list of thirty GBLs that showed the GBL number, the shipper, the date paid, the amount paid, the date of offset, and the amount offset. In a second letter to the Board dated July 10, 2008, LII provided copies of the notices of overcharge for each of the GBLs listed in its previous letter to the Board.

The Board received GSA's response to LII's claim, and LII filed its reply brief² to GSA's response. GSA argued that LII's claim was premature in that no prior claim had been filed at GSA. LII's reply brief contended that the only issue in its claim was whether GSA could collect overcharges by means of offset more than three years after payment and that it "did not have a claim under the regulation."³ Claimant's Reply Brief at 3. This Board, consequently, dismissed LII's claim for lack of jurisdiction in that it was undisputed that no claim had been first submitted to GSA.

In its motion for reconsideration, LII argues that its May 20, 2008, electronic mail message to Mr. Fitzgerald was a "complete" claim. Claimant's Motion for Reconsideration at 3. A claim brought by a transportation service provider (TSP) such as LII:

means any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which they now believe they are owed; and any subsequent bills from the TSP resulting from a transaction that was pre- or postpayment audited by the GSA audit division.

² LII's reply brief, which was undated, was received at this Board on August 28, 2008.

³ The May 20, 2008, electronic mail message from LII's counsel and Mr. Fitzgerald's May 23, 2008, electronic mail message were also attachments to LII's reply brief.

41 CFR 102-118.35 (2007). The requirements for such a claim are the following:

An administrative claim must be accompanied by the transportation document, payment record, reports and information available to GSA and/or to the agency involved and the written and documentary records submitted by the TSP. Oral presentations supplementing the written record are not acceptable.

Id. 102-118.565. In the absence of a properly submitted claim to GSA, this Board has no jurisdiction to review a TSP's claim, and such a claim will be dismissed as premature. *See Delcher Intercontinental*, GSBCA 13904-RATE, 97-1 BCA ¶ 28,698, at 143,311 (1996).

LII's May 20, 2008, electronic mail message falls short of the requirements for a claim for the following reasons: it made no mention of any claimed dollar amount; it contained no demand for a refund of a specific amount of money; and it did not include any supporting documents for the claim. LII has taken alternate positions as to whether a claim was filed. In its reply brief, which was received on August 28, 2008, LII contended that it had not filed a claim with GSA in that filing a claim was not necessary and would have been futile. Claimant's Reply Brief at 9. The only time that LII has identified the relevant GBLs that were subject to offset and demanded the refund of a specific sum of money was in its July 8, 2008, filing with this Board, but that filing cannot substitute for its failure to first submit a claim to GSA. LII's attempt to now characterize its electronic mail message to GSA as a claim is not sufficient to give this Board jurisdiction where the necessary elements of a proper claim were lacking.

Additionally, LII errs in its argument that Mr. Fitzgerald's May 23, 2008, electronic mail message was "a final GSA action subject to review by the Board under regulation 102-118.650." Claimant's Motion for Reconsideration at 5. GSA notifies a TSP that a claim has been disallowed by issuing a GSA Form 7932 settlement certificate. 41 CFR 102-118.620. A settlement action by GSA is required in order for this Board to review a TSP's claim. *Id.* 102-118.650; 72 Fed. Reg. 36794, 36817-18 (July 5, 2007). It has been "held that 'any right of a carrier to reconsideration or review of a payment office's action must be exercised in the context of GSA's audit and settlement of the claim in question.'" *McGill Specialized Carriers*, GSBCA 13926-RATE, 97-1 BCA ¶ 28,876, at 144,014 (quoting *Tri-State Motor Transit Co.*, GSBCA 13896-RATE, 97-1 BCA ¶ 28,873, at 144,008). Furthermore, this Board has no authority to "deem" a claim to have been denied and take jurisdiction over that claim in the absence of a settlement certificate. *See Tri-State Motor Transit Co.*, GSBCA 14352-RATE, 98-1 BCA ¶ 29,521, at 146,408. No settlement certificate was ever issued by GSA. Although LII contends that GSA had knowledge of the

GBLs subject to the offsets and that further pursuit of its claim with GSA would have been futile, this Board cannot exceed its authority to review LII's claim where the necessary requirements for this Board's jurisdiction have not been met.

Decision

The motion for reconsideration is denied.

H. CHUCK KULLBERG
Board Judge